



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0102]

Broker and Freight Forwarder Financial Responsibility Roundtable

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting, request for public comment.

SUMMARY: FMCSA announces that it will host an informal roundtable discussion pertaining to property broker and freight forwarder financial responsibility. The meeting will focus on the adequacy of existing trust fund industry practices, Federal requirements for such institutions, and the underlying instruments they issue for use by brokers and freight forwarders submitting the Broker's or Freight Forwarder's Trust Fund Agreement (FMCSA Form BMC-85) to satisfy the Agency's financial responsibility rules. The Agency seeks information from motor carriers and shippers that have experienced challenges receiving compensation for claims against freight forwarders and brokers due to insufficient funds. The meeting will be public. Individuals with diverse experience, expertise, and perspectives are encouraged to attend. This meeting does not pertain to increasing motor carrier, broker, or freight forwarder minimum financial responsibility limits. If all comments have been exhausted prior to the end of the session, the session may conclude early.

DATES: The roundtable discussion will be held on Friday, May 20, 2016, from 9:30 AM to 4:30 PM, Eastern Time (ET) at the U. S. Department of Transportation, Media Center, 1200 New Jersey Avenue, SE, Ground Floor, Washington, DC, 20590. The entire proceedings will be public.

ADDRESSES: You may submit comments bearing the Federal Docket Management System Docket ID (FMCSA-2016-0102) using any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you would like acknowledgment that the Agency received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that

appears after submitting comments online. The docket FMCSA-2016-0102 will remain open indefinitely.

Privacy Act: In accordance with 5U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Dr. Gerald Folsom, Office of Registration and Safety Information, (202) 385-2405, or by e-mail at Gerald.folsom@dot.gov.

For information about the public meeting: Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, by telephone at 202-366-2551, or by e-mail at Shannon.Watson@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services at 202-366-9826. Business hours are from 8:00 am to 4:30 pm ET, Monday through Friday, except Federal holidays.

SUPPLEMENTAL INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages participation in the roundtable discussion and the submission of comments and related materials. **Documents for discussion at the meeting should be submitted to the docket at least 7 business days in advance of the meeting.**

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0102), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these methods. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, “FMCSA-2016-0102” in the “Keyword” box and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this Notice, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your

submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this

Notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue, SE, Washington, DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and materials received during the comment period.

B. Viewing Comments and Documents

To view comments, go to <http://www.regulations.gov> and insert the docket number, “FMCSA-2016-0102” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Background

MAP-21 Section 32918

In the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141), Congress enacted Section 32918, Financial Security of Brokers and Freight Forwarders. Section 32918 raised the financial security amount for brokers to \$75,000 and extended the financial security requirement to freight forwarders for the first time. FMCSA implemented those requirements in a 2013 Omnibus rulemaking (78 FR 60226)

(Oct. 1, 2013), codified at 49 CFR 387.307(a) (brokers) and 49 CFR 387.403(c) and 387.405 (freight forwarders). Brokers or Freight Forwarders are required to have either a BMC-84 Surety Bond or BMC-85 trust fund on file with the Agency as a condition of obtaining FMCSA operating authority.

MAP-21 added requirements pertaining to the composition of trust fund assets (49 U.S.C. 13906(b)(1)(C),(c)(1)(D)), the immediate suspension of broker or freight forwarder operating authority if their financial security falls below \$75,000 (49 U.S.C. 13906(b)(5),(c)(6)), and the payment of claims in the event of financial failure or insolvency (49 U.S.C. 13906(b)(6),(c)(7)). Additionally, it gave FMCSA the authority to take direct enforcement action against surety providers, either through administrative proceedings, court action or suspending their ability to make financial security filings with the agency. (49 U.S.C. 13906(b)(7),(c)(8)).

Since MAP-21's enactment, various parties have filed numerous complaints with the agency pertaining to BMC-85 trust fund providers. Multiple entities have sought guidance from the Agency, pertaining to the portions of section 32918 not covered in the omnibus rule, particularly regarding procedures to be followed in connection with the insolvency or financial failure of a broker.

As an agency whose primary mission is to promote motor carrier safety, 49 U.S.C. 113(c), FMCSA requests additional input from stakeholders in connection with broker/freight forwarder financial security. The Agency seeks to ensure that shippers and motor carriers can collect on the required broker/freight forwarder financial instruments and that appropriate guidance on section 32918 is available to interested parties while avoiding the diversion of Agency resources from critical safety functions.

The Agency believes that this roundtable discussion will help gather critical information on how to best meet its responsibilities pursuant to section 32918.

FMCSA seeks attendance or participation by all interested parties at the roundtable discussion, including but not limited to, various aspects of the brokerage and freight forwarding industries (including small business segments of the industry and their representatives), motor carriers (including the household goods industry), shippers, owner-operators, the surety bond industry, BMC-85 trust fund filers, groups representing small businesses, state regulators of loan and finance companies and insurance companies, Federal surety bond regulators and all other interested parties.

As a result of this roundtable discussion, FMCSA hopes to develop a clear path toward implementing fully section 32918 of MAP-21.

Topics for Roundtable Discussion

FMCSA welcomes comments or questions before and during the roundtable discussion. The roundtable will center on the following questions but may be expanded as necessary for a full discussion of the relevant issues:

- 1.) Which, if any, BMC-85 Trust Fund holders routinely deny claims made by shippers and motor carriers against those trust funds?
- 2.) What is the nature of the assets that are being held in BMC-85 trust funds and what is the most desirable composition of the assets? For example, should trust funds consist solely of cash or other highly liquid financial instruments? What types of instruments constitute “highly liquid?” Aside from cash, what else can satisfy MAP-21’s mandate that trust funds consist of “readily available assets ... ?” Should the Agency define the classes of investments

held in trust relative to risk profile of the issuer and identify the relative liquidity of such assets or should it rely on other sources for such information?

- 3.) Aside from FMCSA, are BMC-85 trust fund filers being regulated by any other governmental entity? If so, what is the nature of their regulation by state or other authorities?
- 4.) What actions can FMCSA take to ensure that motor carriers and shippers are able to collect on BMC-85 trust funds where legitimate claims are filed with the financial institution?
- 5.) Should the Agency act to address potential issues associated with the solvency of BMC-85 trust funds? If so, what type of action would be most appropriate? What type of FMCSA action pertaining to 49 U.S.C. 13906(b)(6) and (c)(7)(payment in cases of financial failure or insolvency) is necessary? Would agency guidance, as opposed to rulemaking, be sufficient?
- 6.) Should FMCSA require brokers and freight forwarders to demonstrate the creditworthiness of the entity with whom brokers or freight forwarders intend to execute a trust fund, based on a determination of creditworthiness by the applicable state regulatory authority or the Department of Treasury Financial Management Service?

FMCSA will utilize the comments received in advance of the roundtable discussion to further frame the issues.

Accessibility Needs

The U.S. Department of Transportation is committed to providing equal access to the roundtable discussion. If you need special accommodations for the roundtable, such as sign language interpretation, please contact Ms. Shannon L. Watson, Senior Policy Advisor, FMCSA, by telephone at 202-366-2551, at least one week prior to the event to allow us sufficient time to arrange for such services. We will make every attempt to fulfill requested accommodations.

Issued on: April 21, 2016

Larry W. Minor,
Associate Administrator for Policy.

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